IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 20TH NOVEMBER 2007 / 29TH KARTHIKA 1929

Bail Appl..No. 7039 of 2007()

CRIME NO.460/07 OF GANDHI NAGAR STATION, KOTTAYAM
.....

PETITIONER/1ST ACCUSED

JOSIN K.JOY, S/O JOY,
KARIMPLAKKIL HOUSE, UZHAVOOR KARA,
UZHAVOOR VILLAGE, KOTTAYAM.

BY ADV. SRI.N.N.ELAYATH

RESPONDENTS: COMPLAINANT

STATE OF KERALA, REPRESENTED BY
S.H.O., GANDHINAGAR POLICE STATION,
KOTTAYAM DIST., THROUGH THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.JAI GEORGE

THIS BAIL APPLICATION HAVING BEEN FINALLY HEARD ON 20/11/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J.

B.A.No.7039 of 2007

Dated this the 20th day of November 2007

O R D E R

Application for anticipatory bail. The petitioner is the first accused. He faces allegations in a crime registered inter alia under Section 308 I.P.C. The alleged incident took place on 22/8/2007. The de facto complainant and others had brought a person who had suffered injuries in an incident to the hospital. After getting the said injured admitted in the hospital, the de facto complainant and others had gone to take tea. When they were returning to the hospital, the petitioner allegedly pointed out to a group of persons that these are the persons who had brought the said injured to the hospital. Thereupon, those persons allegedly unleashed an attack on the de facto complainant and his friends. Two persons including the de facto complainant had suffered injuries. The crux of the allegations is that the petitioner had pointed out the de facto complainant to a group of hirelings. Altogether there are ten accused persons. Other accused persons have not been identified yet. Investigation is in progress. The soul of the allegations is that

the said group of persons had attacked the de facto complainant and his friends with dangerous weapons including iron rods. Investigation is in progress. The petitioner apprehends imminent arrest.

2. The learned counsel for the petitioner submits that the allegations are totally false and incorrect. The petitioner was not available in the locality at the relevant time. He is a nursing student studying in a college in Karnataka. Totally false allegations are being raised unnecessarily against the petitioner on account of some family disputes. The petitioner may, in these circumstances, be granted anticipatory bail, it is prayed.

3. The learned Public Prosecutor opposes the application. The learned Public Prosecutor submits that the petitioner has been clearly and unambiguously identified by the de facto complainant. His name appears in the prompt F.I statement lodged. Two persons had suffered injuries. The co-accused have not been identified yet. Interrogation of the petitioner is absolutely necessary to resolve the mystery of the crime and to identify the co-accused who had actually indulged in the overt acts. In these circumstances, the petitioner may not

be granted anticipatory bail, submits the learned Public Prosecutor.

4. Having considered all the relevant inputs, I find merit in the opposition by the learned Public Prosecutor. I am satisfied that there are no features in this case which would justify invocation of the extraordinary equitable discretion under Section 438 Cr.P.C. This, I agree with the learned Public Prosecutor, is a fit case where the petitioner must appear before the investigating officer or the learned Magistrate having jurisdiction and then seek regular bail in the normal and ordinary course.

5. In the result, this petition is dismissed. Needless to say, if the petitioner surrenders before the investigating officer or the learned Magistrate and applies for bail, after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits, in accordance with law and expeditiously.

(R.BASANT, JUDGE)

jsr

// True Copy// PA to Judge

R.BASANT, J.

CRL.M.CNo.

ORDER

21ST DAY OF MAY2007